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| EXAMINER | |
|---|---|
| RUHL, DENNIS WILLIAM | |

| ART UNIT | PAPER NUMBER |
|---|---|
| 3629 | |

DATE MAILED: 09/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| Office Action Summary | Application No. | Applicant(s) | |
|---|---|---|---|
| | 10/691,482 | MAYER, YARON | |
| | Examiner | Art Unit | |
| | Dennis Ruhl | 3629 | |

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4)☒ Claim(s) *1-33* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-33* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

**Application Papers**

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☒ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

With respect to the claim for foreign priority, no certified copy of the foreign priority document has been submitted as is required. The claim for foreign priority will not be granted until the conditions set forth in 35 USC 119 are complied with.

1. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-27,33 are rejected under 35 USC 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two prong test of:

1. Whether the invention is within the technological arts; and
2. Whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere idea in the abstract (i.e. abstract ideas, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e. physical sciences as opposed to social sciences for example), and therefore are found to be non-statutory subject matter. For a process claim to pass muster, the recited process must somehow apply, use or advance the technological arts.

In the present case, for claims 1-13,27,33, the claims do not require the use of any technology at all and simply amount to manipulative steps that can be done by people. The examiner does not consider a balloon as is recited in part c) of claim 11 to constitute technology. A balloon can be just an elastomeric material tied at the open

end to form the balloon. To be statutory subject matter there must be some use of technology.

Claims 14-26 are not reciting statutory subject matter because the scope of the claims includes (or reads on) a collection of human beings (i.e. organization). This is not considered to be statutory subject matter under 35 USC 101.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

For claims 3,4,8-11,16-18,21-24,29,32,33, the examiner takes notice that there are more than one period in these claims. A claim is to be a one-sentence recitation of the invention that is considered patentable by the applicant and must end with a period. When a claim contains more than one period there may be confusion as to where the claim actually ends. The examiner has treated all of the claims in their entirety with respect to prior art and 112 issues but applicant is required to amend the claims to only have one period and be only one sentence in length.

For claim 1, what does "on the allowed uses of them" refer to? What is "them"? Is this allowed uses of the areas or allowed uses of the limitations?

For claims 2,15, what is the scope of the phrase "to the extent possible"? How much sustainable harvesting satisfies this claim? This phrase renders the claim indefinite.

For claims 3,16, what are the holdings? Holdings of what? Stock in a timber company possibly? This is indefinite.

For claims 4,17, what is meant by reciting that there are "Virtual areas that are not bound to a single location"? An area by definition defines some sort of location so if you have an area don't you also inherently have a location (namely the area defines a location)? The examiner does not understand what is being claimed here. Part c of this claim is also very confusing and the examiner has no idea what this part is attempting to claim.

For claims 5,18, in part b, the rate of destruction is being claimed for what? Does the scope of this claim include the situation where the price is independent of the rate of destruction of the layer of ozone in the earth? If the price is independent of the rate of destruction of something, what does this positively claim for the method of the invention? The scope of this claim is not known.

For claims 8,21, there are many things that render this claim indefinite. In part a), the recitation of "Each person" refers to whom? The buyer, the seller, a farmer? Previously there was only claimed a selling by a seller to a buyer so who are the persons getting the commission if no middle part has been claimed as being part of the method? What organization is being referred to in part a)? The seller or buyer? A 3rd party? What does "certain chain length: mean? The scope of this is not known. In part c), who are the participants? It is not known who this refers to. In part d), there is no antecedent basis for "the multi-level structure". Is this supposed to be the "multilevel marketing" of claim 7? What is meant by "the logical tree"? No tree of any kind has

previously been claimed so what does this refer to? In part e), "in addition" to what? What step is part e) in addition to? What is the scope of "once in a while"? Is this once a week or once every 100 years? Again, what organization is being referred to in part e). This is not clear. In part f), who are the users? Users of the land? How can a prospective purchaser of land be considered a user when nothing has been used? It is not clear what is being claimed here.

For claims 9,22, in part a), the recitation of "for this" refers to what? The special forces are designed for what? This is not clear.

For claims 11,24, what is the scope of part d)? What is considered a high tech device and what is not? One could consider binoculars to be a high tech device. Is this included in the scope of this claim?

For claims 12,25, what "demand" has previously been claimed? It is not clear what "the demand" is referring to. The demand for land? A demand for wood for fires?

For claims 13,26, what is the scope of "or other fast growing plants"? What is considered to be a fast growing plant as opposed to slow growing plant?

For claim 14, it is not known what is being claimed. Nothing about the actual organization has been claimed other then what they are based on. This also includes a collection of people which in and of itself is not definite by any means as far as personality, experience, etc.

For claim 27, what is the scope of the term "damages to humanity"? What is considered a damage to humanity and what is not? This is indefinite.

For claim 29, what countries are included in the term "in countries that have limitations on buying these lands"? What constitutes a limitation on buying lands? Can this be a tax debt that would be owed on the purchase of land? In part b), who are the "clients"? What organization is being claimed? Claim 1 only recite a seller and buyer so who is the organization and who are the clients?

For claim 30, what is meant by "buying each time a sufficiently large bunch in advance"? In advance of what?

For claim 32, in part a), what is meant by "their general area"? Could this be a satellite photo of a continent that contains purchased land? Since each of a-e stand alone in the claim (are species of the claim), for part b), what are the zoom functions for? Is there some kind of camera or telescope that the user can employ? How can one have a zoom function without claiming a physical component that has the zoom function?

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-5,7,10,14-26,29-32 are rejected under 35 U.S.C. 102(b) as being anticipated by the "Rainforest Preservation Foundation". This describes events that took place more than one year prior to the filing date of this application. The earliest

date applicant could be entitled to is 10/20/2002 and the events discussed in this publication took place in the 1990's.

For claim 1, the Rainforest Pres. Foundation discloses the selling of rainforest land from landowners to a buyer (The Rainforest Preservation Foundation"). The areas were purchased for the disclosed reason of preserving the rainforest areas. This is guarding them against continued destruction. The selling of the lands was based on certain conditions. The buyer was responsible for satisfying conditions set forth in the 4-point plan.

For claim 2, the article discloses rotational farming, which constitutes sustainable harvesting as claimed.

For claim 3, once the buyers took possession of the land, if they wanted to farm the land, they would inherently have to spend some money to get seed, and tools to do the farming. The use of language such as "if" sets up a hypothetic situation that may occur in the future. The article satisfies part a) of this claim.

For claim 4, the land purchased was an actual specific area.

For claim 5, it is inherent that the price of land increases with the decrease in supply. This is a basis principle of economics. The less rainforest that there is the more valuable the remaining rainforest areas are.

For claim 7, the article discloses that there were meetings with government officials, engineers, ecologists, etc.. and this is considered to be multi level marketing. It is marketing their cause on many levels, government levels, academic levels, etc..

For claim 10, in the step of educating the citizens on sustainable harvesting (i.e. rotational farming), you are employing (using) them for what is claimed.

For claims 14-26, the Rainforest Preservation Foundation anticipates what is claimed. Claim 14 is an article claim and patentable weight will be given to what is structurally claimed, not what the organization can do or may do as a method of doing business.

For claim 29, as best understood by the examiner due to the 112 problems, the article discloses what is claimed. The buyers who buy the land (the claimed organization?) really owns the land. Further, they can lease farming rights on it if they desire to do so.

For claim 30, the article inherently discloses the purchase of "a sufficiently large bunch". The 8 million acres owned by the foundation were not purchased one at a time.

For claim 31, the buyers are fully capable of doing what is claimed. If they want to they can share revenues.

For claim 32, users (?) can view interactively the rainforests by going there in person. When in the rainforest one can use binoculars that will allow one to zoom in on wildlife in various areas.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 6,8, are rejected under 35 U.S.C. 103(a) as being unpatentable over the "Rainforest Preservation Foundation", which discloses the invention substantially as claimed.

For claims 6,8, not disclosed is the price decreasing with the more a person buys (part g of claim 8). This is reciting what is known as a volume discount (buying in bulk). It is considered obvious to one of ordinary skill in the art at the time the invention was made to sell land at a cheaper per unit price when larger amounts of land are being purchased. It is very well known that in commerce when one buys more of one item the price per unit drops.

9. Claims 9,11-13,27,28,33, are rejected under 35 U.S.C. 103(a) as being unpatentable over "Rainforest Preservation Foundation" as applied to the claims above, and further in view of "To conserve rainforest, we have to help local people live sustainably" (6/1/2000).

For claim 9, Not disclosed is that the government also agrees to guard the areas with police, army or "special forces". The 2000 article discloses the continued illegal activities that occur in what are supposed to be protected rainforest areas. Also disclosed is that hired guns may need to be hired to address the illegal activity. In view of the 2000 articled and the recognition that illegal activity continues on preservation rainforest land it would have been obvious to one of ordinary skill in the art to have the government guard the rainforest areas with some sort of official agent of the

government. Many countries have laws against the taking of certain game and plants on protected areas, this is a widely known fact. Since the government has an interest in the preservation of the rainforest lands, it is considered obvious to one of ordinary skill in the art to have them help and guard the lands against damaging/illegal behavior.

With respect to claim 11, from claim 9, some sort of high tech means will be employed to guard the preservation lands.

For claim 12, it is considered obvious to one of ordinary skill in the art to promote the use of alternate fuels so that the rainforest is not plundered for wood fuel. Knowing that the rainforests are being cut down at alarming rates makes the step of promoting alternate sources of fuel to the use of wood is obvious, especially in view of the fact that what you are trying to preserve is a forest.

For claim 13, when one would look to what kind of alternate fuels could be used instead of rainforest tree wood, one would obviously look to a fast growing plant as claimed. If one could grow a fast growing plant for fuel, the source itself could be grown again fast.

For claim 27, it is not disclosed that class action lawsuits will be filed to stop the destruction of the rainforests. If a multi national organization is destroying the rainforest in the opinion of what can be called an affected class, one would obviously look to the courts to file a lawsuit. The filing of a class action lawsuit is considered obvious to one of ordinary skill in the art at the time the invention was made to file a class action lawsuit in an attempt to stop the destruction of the rainforest.

For claim 28, the choice of what you decide to sue for is a choice that is considered obvious. Obviously you would sue for am amount that relates to damages incurred, otherwise you would have no standing in a court of law. If no damages can be shown as being incurred, there is no merit to the lawsuit. When you sue, you are suing for damages that have already taken place. Since claim 27 does not require that the governments be sued the claim is satisfied by just suing for back damages.

For claim 33, not disclosed is the use of balloons or zeppelins for the purpose of carrying harvests from various areas. Since the claim does not require the use of balloons or harvests to be in the rainforest itself, since balloons and zeppelin have been known for many years to be a form of transportation, it is considered obvious to one of ordinary skill in the art at the time the invention was made to use a balloon or zeppelin to transfer harvests.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is 703-308-2262. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 703-308-2702. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DENNIS RUHL
PRIMARY EXAMINER